



November 8, 2019

Honorable Darcie Tokioka
Acting Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Reference: Remail Payment Agreement

Dear Ms. Tokioka:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is hereby filing a copy of a Remail Payment Agreement (Agreement), which the Postal Service has entered into with a foreign designated postal operator as a compromise and settlement of a dispute over certain past charges. See Attachment 2 (redacted). The Postal Service has marked the non-public version of the Agreement as "Confidential" and "Non-Public" because it contains information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of the Agreement to be protected by Exemption 3 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(3), coupled with 39 U.S.C. § 410(c)(2), and thereby not subject to mandatory disclosure under the FOIA. Further, the document contains confidential commercial information of the affected postal operator, and as such, certain portions of the instrument are also subject to protection under Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4). Consequently, we have attached an Application for non-public treatment of the document under 39 C.F.R. § 3007.201. See Attachment 1. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us if the document becomes subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "LaSandy K. Raynor".

LaSandy K. Raynor
Attorney

Enclosures

**APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR
NON-PUBLIC TREATMENT**

In accordance with 39 C.F.R. Part 3007, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the unredacted version of the Remail Payment Agreement (“Agreement”) between the Postal Service and a foreign designated postal operator. The Postal Service is transmitting the Agreement to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d).

The redacted version of the Agreement is enclosed with this Application as Attachment

2. The Postal Service hereby furnishes below the justification required by 39 C.F.R. § 3007.201 for this Application.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials;

The material designated as non-public consists of information of a commercial nature that would not be publicly disclosed under good business practices. In the Postal Service’s view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).¹ Because the portions of the material that the Postal Service seeks to file under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the

¹ In appropriate circumstances, the Commission may determine the proper level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 4679, Order Adopting Final Rules Relating to Non-Public Information, Docket No. RM2018-3, June 27, 2018, at 16 (reconfirming that the adopted final rules do not alter this long-standing practice); PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11. *Cf. Food Marketing Institute v. Argus Leader Media*, No. 18-481, 139 S.Ct. 2356 (2019).

Commission to support its determination that this material is exempt from public disclosure and to grant its Application for its non-public treatment.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of [39 C.F.R. § 3007.201] (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual;²

The submitter, the Postal Service, has a proprietary interest in the information contained in the non-public version of the Agreement. In the case of agreements, such as the one being transmitted here, the Postal Service believes that the foreign postal operator that is a counterparty to the Agreement is the only third-party that also has proprietary interests in that information. For itself and that third-party operator, the Postal Service identifies as an appropriate contact person Mr. Jimmy Ortiz, Acting Executive Director, International Postal Affairs, United States Postal Service. Mr. Ortiz's phone number is +1 (202) 268-6356, and his email address is jimmy.ortiz@usps.gov. Through publication of Circular 166, published on 19 November 2018, the Postal Service has already informed the foreign postal operator, consistent with 39 C.F.R. §

² Section 3007.201(b)(2) further states the following:

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

3007.200(b), about the nature and scope of Commission filings and its ability to address any confidentiality concerns directly with the Commission.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public;

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting the Agreement with a foreign postal operator that is an agency a foreign government. The Agreement includes financial and volume information that should remain confidential. The redactions applied to the Agreement protect specific financial and volume information, as well as negotiated payment amounts and terms that the foreign postal operator agreed to pay. To the extent practicable, the Postal Service has limited its redactions to the actual information it has determined to be exempt from disclosure under 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b).

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure;

If the portions of the Agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it could suffer commercial harm. Information about negotiated payment amounts is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Foreign postal operators could use the information to their advantage in negotiating the terms of their own future payment agreements with the Postal Service. Moreover, the counterparty could also be subject to claims from other operators and public disclosure of this agreement could disclose the threshold that the

operator agreed to pay. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the redacted terms of the Agreement would provide other foreign postal operators negotiating power to obtain similar terms from the Postal Service.

Hypothetical: The negotiated terms are disclosed publicly on the Postal Regulatory Commission's website, which another postal operator sees. That postal operator then uses that publicly disclosed information to insist that it must receive similar, or better, terms when negotiating its own payment agreement with the Postal Service.

Harm: Public disclosure of information in the Agreement would be used by other foreign postal operators to the detriment of the counterparty to the Agreement.

Hypothetical: Another foreign postal operator competing with the counterparty obtains a copy of the unredacted version of the Agreement from the Commission's website. That foreign postal operator uses the information to assess the counterparty's volumes and volume distribution and conducts market intelligence on the counterparty's business practices.

Harm: Public disclosure of any volume data concerning this Agreement would give other foreign postal operators a marketing advantage over the counterparty to the Agreement.

Hypothetical: The volume data is publicly disclosed on the Commission's website, which another foreign postal operator sees. That foreign postal operator could then use the volume data associated with this Agreement to assess the counterparty's growth opportunities and thereby develop benchmarks for competitive alternatives.

(6) The extent of the protection from public disclosure alleged to be necessary;

The Postal Service maintains that the redacted portions of the material filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service (including other postal operators) should not be provided access to the non-public material.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3007.401(a). However, because the Postal Service's relationships with postal operators often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b)-(c).

(8) Any other relevant factors or reasons to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service respectfully requests that the Commission grant its Application for non-public treatment of the identified material.

ROBERT H. RAINES JR.
A/MANAGING DIRECTOR, GLOBAL BUSINESS



August 7, 2019

[REDACTED]

Dear [REDACTED]:

On behalf of the U.S. Postal Service, I appreciate your proposal for payment to resolve the 2018 remailing issue. I believe that your proposal is an acceptable way forward. To ensure that we have understood your proposal, the total sum [REDACTED] will pay is [REDACTED] which [REDACTED] will pay within [REDACTED] days of your receipt of this letter sent by email correspondence.

[REDACTED]

[REDACTED]

[REDACTED]

We are pleased that we have been able to work together to resolve this issue on this occasion. [REDACTED] should now understand that the United States does not accept re-mail at terminal dues rates, and should be able to take action to ensure that its customers do not send remail to the United States. In the future, we will impose the remail charge as applicable without additional discussion.

-2-

Please acknowledge that this letter correctly states your proposal by your signature below, and please return a signed copy of this letter to me.

Sincerely,



Robert H. Raines Jr.

I acknowledge receipt of this letter and agree that these are the terms to resolve the 2018 remailing issue.

12 AUG 2019

Date

Printed name: _____

Title: _____